



04-10-06

IFW/  
DAC

April 7, 2006

Patent Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Re: Applicant(s): Yencho, Stephen A.; et. al.  
Assignee: Cardica, Inc.  
Title: Superelastic Anastomosis Device  
Serial No.: 10/810,170  
Examiner: Michael G. Mendoza  
Docket No.: 152  
Filed: March 26, 2004  
Group Art Unit: 3731

Transmitted herewith are the following documents in the above-identified application:

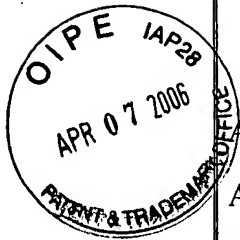
- (1) This Transmittal Letter;
- (2) Renewed Petition Under 37 CFR 1.181, including four exhibits; and
- (3) Return postcard.

<input type="checkbox"/>	Petition fee under 37 CFR 1.17(h)	\$	0.00
<b>Total additional fee for this Amendment:</b>		\$	<u>0.00</u>
<input checked="" type="checkbox"/>	Conditional Petition for Extension of Time: If an extension of time is required for timely filing of the enclosed document(s) after all papers filed with this transmittal have been considered, an extension of time is hereby requested.		
<input checked="" type="checkbox"/>	Please charge our Deposit Account No. 502108 in the amount of	\$	<u>0.00</u>
<input checked="" type="checkbox"/>	Please charge any additional fees required and credit any overpayment to our Deposit Account No. 502108.		
<b>Total:</b>		\$	<u>0.00</u>

**EXPRESS MAIL SERIAL NO.  
EV430389143US**

Respectfully submitted,

Brian A. Schar  
Reg. No. 45,076  
Chief Patent Counsel  
Cardica, Inc.  
900 Saginaw Drive  
Redwood City, CA 94063  
(650) 331-7162



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicants: Yencho, Stephen A.; et. al.  
Assignee: Cardica, Inc.  
Title: Superelastic Anastomosis Device  
Serial No.: 10/810,170 Filing Date: March 26, 2004  
Examiner: Michael G. Mendoza Group Art Unit: 3731  
Docket No.: 152

April 7, 2006

Mail Stop Petition  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, Virginia 22313-1450

**RENEWED PETITION UNDER 37 CFR 1.181**

This petition is in response to the Decision on Petition ("Decision") of March 20, 2006, a copy of which is attached to this petition as Exhibit A.

A Petition to Withdraw Holding of Abandonment Under 37 CFR 1.181(a) ("Petition") was filed in this case on February 14, 2006, a copy of which is attached to this petition as Exhibit B. The Decision denied the Petition based on MPEP 601.03 and MPEP 711.03(c), stating that "where an application becomes abandoned as a consequence of a change of correspondence address... petitioners are required to establish that due care was taken to adhere to the requirement for prompt notification in each concerned application of the change of address...and must include an adequate showing that a timely notification of the change of address was filed in the application concerned, and in a manner reasonably calculated to call attention to the fact that it was a notification of a change of address." (emphasis added).

The Decision was in error on at least two grounds, and as a result withdrawal of the Decision and grant of the Petition is respectfully solicited. First, the application did not become abandoned as a consequence of a change of correspondence address, because the

correspondence address has not changed. The Notice of Abandonment mailed on February 8, 2006 (which is Exhibit 1 to the Petition attached to this document as Exhibit B) was mailed to Assignee's correct address: 900 Saginaw Drive, Redwood City, California 94063. The previous communication received from the Patent Office was an Office Action mailed on April 19, 2005, a copy of the first page of which is attached as Exhibit C, and which was also mailed to the same, correct address: 900 Saginaw Drive, Redwood City, California 94063. Thus, the assignee has shown that it did not change its correspondence address between the receipt of the first Office Action in this case and the receipt of the Notice of Abandonment. The assignee did file a Power of Attorney in this case on August 15, 2005 in order to associate this case with its customer number, 33109, so that the application could be accessed via Private PAIR. A copy of this Power of Attorney is attached as Exhibit D. However, the address given on the Power of Attorney, and the address associated with Customer Number 33109, is the same address as the correspondence address of record in this application: 900 Saginaw Drive, Redwood City, California 94063. Thus, the showing made in the Petition was sufficient to allow the Petition to be granted, because the correspondence address did not change, and thus the application did not and could not go abandoned as a consequence of a change of correspondence address.

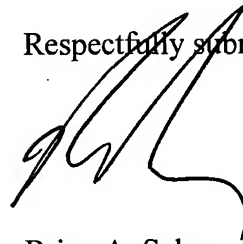
Second, an action of a federal administrative agency such as the Patent and Trademark Office will be set aside if it is "without observance of procedure required by law." (5 U.S.C. §706(2)(d)) (part of the Administrative Procedure Act). The Petition was prepared in accordance with MPEP 711.03(c)(I)(A), which sets out the requirements for withdrawing a holding of abandonment on the grounds that an Office Action was not received. This section of the MPEP does not distinguish between failure to receive mail from the Patent Office due to failure of the Postal Service and due to a change of correspondence address of record. By adding requirements beyond those set out in MPEP 711.03(c)(I)(A) for withdrawing a holding

of abandonment on the grounds that an Office Action was not received, the Decision failed to observe procedure required by law, in violation of 5 U.S.C. §706(2)(d).

Because Cardica's attorney never received the Office Action in this application, as proven by the Petition, and because Cardica did not change its correspondence address between the receipt of the first Office Action and the receipt of the Notice of Abandonment, Cardica requests that the holding of abandonment be withdrawn, and that the Office Action be sent to the correspondence address of record, which is the same as the address provided below. No petition fee is required. Please charge any underpayment or credit any overpayment to deposit account 502108.

Please contact the undersigned if there are any questions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'B. A. Schar', with a stylized flourish at the end.

Brian A. Schar  
Attorney for Cardica, Inc.  
Reg. No. 45,076  
900 Saginaw Drive  
Redwood City, CA 94063  
(650) 331-7162



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
P.O. BOX 1450  
ALEXANDRIA, VA 22313-1450  
www.uspto.gov

**COPY MAILED**

**MAR 20 2006**

**OFFICE OF PETITIONS**

In re Application of :  
Yencho, et. al : DECISION ON PETITION  
Application No. 10/810,170 :  
Filed: March 26, 2004 :  
Docket No.: 152 :

This is a decision on the petition to revive under 37 CFR 1.181, filed February 14, 2006.

The petition under 37 CFR 1.181 to withdraw the holding of abandonment is hereby DISMISSED.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181." This is not a final agency decision.

This application became abandoned October 30, 2005 for failure to timely submit a proper reply to the non-final Office action mailed July 29, 2005. Notice of Abandonment was mailed February 8, 2006.

Petitioner asserts non-receipt of the Office communication mailed July 29, 2005.

In the absence of any irregularity in the mailing of the Office communication, there is a strong presumption that the Office communication was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office communication was not in fact received. The showing required to establish non-receipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See, MPEP 711.03(c). The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

Petitioners are advised, however, that where an application becomes abandoned as a consequence of a change of correspondence address (the Office action being mailed to the old, uncorrected address and failing to reach the applicant in sufficient time to permit a timely reply), petitioners are required to establish that due care was taken to adhere to the requirement for prompt notification in each concerned application of the change of address (See, MPEP 601.03), and must include an adequate showing that a timely notification of the change of address was filed in the application concerned, and in a manner reasonably calculated to call attention to the fact that it was a notification of a change of address. See, MPEP 711.03(c).

Office records indicate the Office communication was properly mailed to the correspondence address of record at the time of mailing. Accordingly, there was no irregularity in mailing the Office communication on the part of the United States Patent and Trademark Office as a change of correspondence address was filed August 15, 2005, subsequent to the date of mailing of the Notice.

#### **ALTERNATE VENUE**

Petitioners are strongly urged to consider filing a petition stating that the delay was unintentional. Petitioner's attention is directed to 37 CFR 1.137(b) which provides for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of an issue fee was "unavoidable". An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the required petition fee and reply.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

By mail:

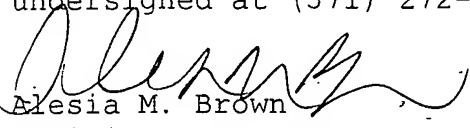
**Mail Stop Petition**  
Commissioner for Patents

P.O. Box 1450  
Alexandria, VA 22313-1450

By facsimile: (571) 273-8300

By hand delivery: U.S. Patent and Trademark Office  
Customer Window, Mail Stop Petition  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3205.



Alesia M. Brown  
Petitions Attorney  
Office of Petitions

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicants: Yencho, Stephen A.; et. al.  
Assignee: Cardica, Inc.  
Title: Superelastic Anastomosis Device  
Serial No.: 10/810,170 Filing Date: March 26, 2004  
Examiner: Michael G. Mendoza Group Art Unit: 3731  
Docket No.: 152

February 14, 2006

Mail Stop Petition  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, Virginia 22313-1450

**PETITION TO REVIVE UNITENTIONALLY-ABANDONED  
PATENT APPLICATION UNDER 37 CFR 1.181(a)**

This petition is in response to the Notice of Abandonment of February 8, 2006, a copy of which is attached to this petition as Exhibit 1. The Notice of Abandonment stated that abandonment resulted from "failure to timely file a proper reply to the Office letter mailed on 29 July 2005." However, the Office Action mailed on July 29, 2005 ("Office Action") was not received by Cardica's attorney. Consequently, Cardica's attorney respectfully petitions the USPTO to withdraw the holding of abandonment in this patent application.

A search of the file jacket and docket records indicated that the Office Action was not received. A copy of the docket record from Cardica's attorney is attached as Exhibit 2, in accordance with the requirements of MPEP 711.03(c)(I)(A). Cardica's attorney utilizes the web-based Foundation IP application to docket responses, and Exhibit 2 is a printout of the web page in Foundation IP for this patent application. As seen in the docket record of Exhibit 2, no reply is docketed for this application at any time within three months after July 29, 2005, the date of the Office Action.



Because Cardica's attorney never received the Office Action in this application, as proven by this Petition, Cardica requests that the holding of abandonment be withdrawn, and that the Office Action be sent to the correspondence address of record, which should match the address provided below. Please charge the petition fee under 37 CFR 1.17(h) to Deposit Account No. 502108, and please charge any underpayment or credit any overpayment to that deposit account.

Please contact the undersigned if there are any questions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'B. A. Schar', with a stylized flourish at the end.

Brian A. Schar  
Attorney for Cardica, Inc.  
Reg. No. 45,076  
900 Saginaw Drive  
Redwood City, CA 94063  
(650) 331-7162

# Notice of Abandonment

Application No.

10/810,170

Examiner

Michael G. Mendoza

Applicant(s)

YENCHO ET AL.

Art Unit

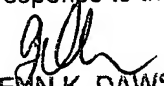
3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 29 July 2005.
  - (a) ☐ A reply was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
  - (b) ☐ A proposed reply was received on \_\_\_\_\_, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.  
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
  - (c) ☐ A reply was received on \_\_\_\_\_ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
  - (d) ☒ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
  - (a) ☐ The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
  - (b) ☐ The submitted fee of \$\_\_\_\_\_ is insufficient. A balance of \$\_\_\_\_\_ is due.  
The issue fee required by 37 CFR 1.18 is \$\_\_\_\_\_. The publication fee, if required by 37 CFR 1.18(d), is \$\_\_\_\_\_.
  - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
  - (a) ☐ Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
  - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☒ The reason(s) below:

In a telephone conversation 2/3/2006 Brian Schar stated that no reply has been sent in response to the Office Action Mailed out on 7/29/2005.

  
GLENN K. DAWSON  
PRIMARY EXAMINER

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

## Matter Home



## Matter List



[New Related Matter](#) | [New Unrelated Matter](#) | [Return to Matter List](#) | [Merge Docs](#) | [Notes](#) | [Country Law](#) | [Purge Private Emails](#) | [TM Map Search](#)

## Matter

**Edit**

Title:	Implantable Superelastic Anastomosis Device	File #:	152
Type:	Utility - CON	Country:	United States of
Applicant:	Cardica Inc.	Applicant File #:	152
FIP ID:	118307	Publication Date:	Sep 16, 2004
Status:	Pending	Matter Entity Size:	Small
Date Filed:	Mar 26, 2004	Issue Date:	
Serial #:	10/810,170	Patent #:	
Prototype:	No	Default category prototype:	No

Created by: Brian Schar, Nov 18, 2004    Hosted By: Cardica Inc.

[Details](#) [Activities](#) [Entities](#) [Personnel](#) [References\\*](#) [Related Matters](#) [Clusters](#) [Physical Files](#) [Public Messages](#) [ComPAIR](#) [Sh](#)

**Delete**

<input type="checkbox"/> Activity	Description/Comments	Status	Date 1	Date 2	Quick Links	Edit
<input type="checkbox"/> <b>Matter Management</b>						<a href="#">Edit</a> -- Add --
<input type="checkbox"/> <b>Petition To Revive or Withdraw Holding of Abandonment</b>	Petition To Revive An Abandoned Application	Open: Docket Items	Petition Due : 05/08/2006			<a href="#">Edit</a> -- Add --
<input type="checkbox"/> <b>Notice of Abandonment Received</b>		Completed	Date Mailed : 02/08/2006	Date Received : 02/10/2006		<a href="#">Edit</a> -- Add --
<input type="checkbox"/> <b>Supplemental Information Disclosure Statement</b>	Supplemental Information Disclosure Statement	Open: Docket Items	Supplemental IDS Due : 02/02/2006			<a href="#">Edit</a> -- Add --
<input type="checkbox"/> <b>Office Action Response</b>		Completed	Date Done : 05/13/2005	Date Received		<a href="#">Edit</a> -- Add --
<input type="checkbox"/> <b>Office Action Received</b>	Non Final Office Action Received	Completed	Date Mailed : 04/19/2005	Date Received : 04/22/2005		<a href="#">Edit</a> -- Add --
<input type="checkbox"/> <b>Information Disclosure Statement Due</b>		Completed	Date Done : 03/26/2004			<a href="#">Edit</a> -- Add --

[Home](#) | [Matters](#) | [Contacts](#) | [Messages](#) | [Tasks](#) | [IDS Manager](#) | [Billing](#) | [Clusters](#) | [Reports](#) | [ComPAIR](#)

Copyright © 2002-2005 FoundationIP LLC., "All Rights Reserved."

[Terms of Use](#)



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,170	03/26/2004	Stephen Yencho	152	8001

7590 04/19/2005

Brian A. Schar  
Chief Patent Counsel  
Cardica, Inc.  
900 Saginaw Drive  
Redwood City, CA 94063

EXAMINER

MENDOZA, MICHAEL G

ART UNIT

PAPER NUMBER

3731

DATE MAILED: 04/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**VIA FACSIMILE**  
**(571) 273-8300**

August 15, 2005

Applicant(s): Yencho, Stephen A.; et. al.  
Assignee: Cardica, Inc.  
Title: Superelastic Anastomosis Device  
Docket No.: 152 Filing Date: March 26, 2004  
Serial No. 10/810,170


Transmitted herewith are the following documents in the above-identified application:

- (1) This Transmittal Letter; and
- (2) Power of Attorney.

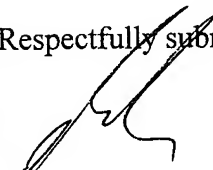
No additional fee is required. Please charge any additional fees required and credit any overpayment to our Deposit Account No. 502108.

**Certificate of Transmission**

I hereby certify that this correspondence is being facsimile transmitted to the U.S Patent and Trademark Office (Fax No. (571) 273-8300) on August 15, 2005.

  
\_\_\_\_\_  
Brian Schar

Respectfully submitted,

  
Brian A. Schar  
Cardica, Inc.  
(650) 331-7162  
Reg. No. 45,076

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Yencho, Stephen A., et. al.  
Assignee: Cardica, Inc.  
Title: Superelastic Anastomosis Device  
Docket No.: 152 Filing Date: March 26, 2004  
Serial No. 10/810,170

Commissioner For Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

**POWER OF ATTORNEY BY ASSIGNEE OF ENTIRE INTEREST AND  
ASSIGNEE CERTIFICATION UNDER 37 CFR 3.73(B)**

Sir:

Assignee Cardica, Inc. hereby revokes any and all powers of attorney previously given and appoints hereby the practitioners associated with the Customer Number **33109** to prosecute the above-identified application and to transact all business in the United States Patent and Trademark Office in connection therewith.

Please address all correspondence and telephone calls regarding this application to the address associated with Customer Number 33109, which is:

Cardica, Inc.  
900 Saginaw Drive  
Redwood City, CA 94063  
(650) 331-7162

The undersigned representative of assignee Cardica, Inc., a Delaware corporation, certifies that assignee Cardica, Inc. is the assignee of the entire right, title and interest in the above-identified patent application by virtue of a chain of title from the inventor(s) of the above-identified patent application to the above-identified assignee as shown below:

From: Vargas, Jaime; et. al.,

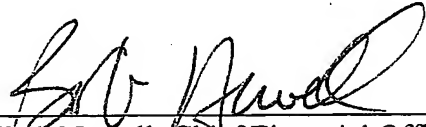
To: Vascular Innovations, Inc. The document was recorded in the Patent and Trademark Office at Reel 011525, Frame 0925.

Change of Assignee Name From: Vascular Innovations, Inc.,

To: Cardica, Inc. The document was recorded in the Patent and Trademark Office at Reel 013180, Frame 0120.

The assignment document recorded in the Patent and Trademark Office at Reel 011525, Frame 0925 is recorded in the parent to this continuation application, and expressly assigns to assignee Vascular Innovations, Inc. (now Cardica, Inc., as set forth at Reel 013180, Frame 0120) the entire right, title and interest in that parent application as well as all divisions, reissues, continuations and extensions thereof; the above-identified patent application is a continuation thereof.

The undersigned (whose title is supplied below) is empowered to sign this certificate on behalf of assignee Cardica, Inc.

  
\_\_\_\_\_  
Bob Newell, Chief Financial Officer  
8/11/05  
\_\_\_\_\_  
Date

## Auto-Reply Facsimile Transmission



TO: Fax Sender at 650 364 3134

Fax Information

Date Received:

Total Pages:


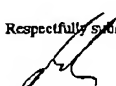
8/15/2005 12:22:17 PM [Eastern Daylight Time]

3 (including cover page)

**ADVISORY:** This is an automatically generated return receipt confirmation of the facsimile transmission received by the Office. Please check to make sure that the number of pages listed as received in Total Pages above matches what was intended to be sent. Applicants are advised to retain this receipt in the unlikely event that proof of this facsimile transmission is necessary. Applicants are also advised to use the certificate of facsimile transmission procedures set forth in 37 CFR 1.8(a) and (b), 37 CFR 1.6(f). Trademark Applicants, also see the Trademark Manual of Examining Procedure (TMEP) section 306 et seq.

Received  
Cover  
Page

=====>

Aug 15 2005 8:22AM Cardica		650-364-3134		p.1	
<b>-- 3 Pages --</b>					
<b>VIA FACSIMILE</b> (571) 273-8300					
August 15, 2005					
Applicant(s):	Yencho, Stephen A.; et. al.				
Assignee:	Cardica, Inc.				
Title:	Superelastic Anastomosis Device				
Docket No.:	152	Filing Date:	March 26, 2004		
Serial No.	10/810,170				
Transmitted herewith are the following documents in the above-identified application:					
(1) This Transmittal Letter, and					
(2) Power of Attorney.					
No additional fee is required. Please charge any additional fees required and credit any overpayment to our Deposit Account No. 502108.					
<div style="border: 1px solid black; padding: 5px;"><b>Certificate of Transmission</b> I hereby certify that this correspondence is being facsimile transmitted to the U.S. Patent and Trademark Office (Fax No. (571) 273-8300) on August 15, 2005.  Brian A. Schar</div>					
<div style="text-align: right;">Respectfully submitted,  Brian A. Schar Cardica, Inc. (650) 331-7162 Reg. No. 45,076</div>					
PAGE 1/1 - ACQU AT 8/15/2005 12:21:37 PM [Eastern Daylight Time] BY USPTO-CTF/STP-2/3 - DMS:2729396 - C30-430 244 3134 - DURATION (mm:ss) 00:08					